

# Prop 65 Clearinghouse What Can Be Done to Stop Overwarning

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## Restatement Position

Excessive, multitudinous warnings “may be ignored by users and consumers and may diminish the significance of warnings about [other] risks” and “could reduce the efficacy of warnings generally.”

-- RESTATEMENT (THIRD) OF TORTS: PRODUCTS LIAB. § 2 cmt. j (1998)

## OEHHA Position

“[U]nnecessary warnings . . . could distract the public from other important warnings on consumer products.”

-- Final Statement of Reasons for the “Naturally Occurring” Regulation  
(now found at 27 Cal. Code Regs. § 25501)

## FDA Position

“. . . [R]ather than requiring warnings for every single ingredient or product with possible deleterious effects, FDA has deliberately implemented a more nuanced approach, relying primarily on disclosure of ingredient information and nutrition information, taking action in instances of adulterated and misbranded foods and, only under exceptional circumstances, requiring manufacturers to provide warnings on their labels.”

-- August 12, 2005 Letter to California AG (the tuna letter)

## FDA Position

“ . . . FDA is unwilling to require a warning statement in the absence of clear evidence of a hazard . . . [as the agency] is concerned that it would overexpose consumers to warnings. As a result, consumers may ignore, and become inattentive to, all such statements.”

-- Preamble to Proposed Rule on Food Labeling, 56 Fed. Reg. 28592, 28615 (1991)

## Court of Appeal Position

“Since one of the principal purposes of [Proposition 65] is to provide ‘clear and reasonable warning’ of exposure to carcinogens and reproductive toxins, such warnings would be diluted to the point of meaninglessness if they were to be found on most or all food products.”

-- *Nicolle-Wagner v. Deukmejian*, 230 Cal. App. 3d 652, 661 (1991)  
(upholding the “Naturally Occurring” Regulation)

## AB 543 (Quirk, 2015)

*(b) A person, in the course of doing business, does not knowingly and intentionally expose an individual to a chemical known to the state to cause cancer or reproductive toxicity if there is an exposure assessment that meets all of the following conditions:*

*(1) It has been conducted by, or under the direction of, a qualified scientist in accordance with the implementing regulations adopted by the Office of Environmental Health Hazard Assessment that are relevant to the alleged exposure.*

*(2) It evaluates the same chemical in or from the relevant source that is the subject of the alleged exposure and concludes that the person in the course of doing business is not exposing an individual to the chemical at a level that requires a warning or, alternatively, that no specification of the particular chemical is required for a provided warning.*

*(3) It is documented, in writing, and has been approved and signed by the qualified scientist before the person in the course of doing business receives a written notice of an alleged exposure pursuant to Section 25249.7.*